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IN THE

Supreme Court of the United States

October Term, 1966

No. ~~1480~~ 199

MARGUERITE LOVELETT NOWELL,
Petitioner,

vs.

AMES NOWELL,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS AT DALLAS.

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Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas entered on October 28, 1966.

OPINIONS BELOW.

The opinion of the Court of Civil Appeals for the

Fifth Supreme Judicial District of Texas at Dallas is reported in 408 S.W. 2d 550 (Texas Civ. App. 1966). A copy of that opinion is attached hereto in Appendix I.

The Supreme Court of Texas dismissed the petitioner's application for a writ of error, without opinion.

There was no written opinion of the trial court (Domestic Relations Court of Dallas County).

JURISDICTION.

The judgment of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas was made and entered on October 28, 1966. Petitioner's motion to reargue was filed on November 10, 1966 and was overruled on November 18, 1966. The petitioner's application for writ of error was dismissed by the Supreme Court of Texas on February 1, 1967; and on March 1, 1967 the petitioner's motion for re-hearing of application for writ of error was overruled by that Court. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3).

QUESTIONS PRESENTED.

The questions presented are:

1. Whether the Texas proceedings culminating in a divorce and orders affecting property rights, over the timely objections of a non-resident defendant, were in violation of the due process clauses of

the Fifth and Fourteenth Amendments so as to void the jurisdiction of the Texas courts.

2. Whether the Texas Domestic Relations Court's refusal to recognize the prior pending jurisdiction of the Connecticut Superior Court, and the disregard by the Texas Court on the injunctions issued by the Connecticut Superior Court constituted a violation of the doctrines of (a) full faith and credit, and (b) comity, as provided in Article IV, Sec. 1 of the United States Constitution; and whether the same constituted an undue interference with the jurisdiction of the Connecticut courts in violation of Article IV Sec. 1 of the United States Constitution and in violation of the due process clause as contained in the Fifth and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

1. The statutes involved are Sec. 46-29 and 46-30 of the General Statutes of Connecticut, Revision of 1958, (Vol. VIII pp. 149, 150). These statutes are set out in full in Appendix II.

2. The provisions of the Constitution of the United States which are relied upon, are portions of the Fifth Amendment and Fourteenth Amendment, set out in Appendix III, and Article 4, Section 1, which reads as follows:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Pro-

ceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

STATEMENT.

Married on April 6, 1957, Ames and Marguerite moved to Connecticut in 1959. The petitioner Marguerite brought suit for divorce (later amended to claim a legal separation) in Connecticut in November, 1962, achieving personal service on Ames in Darien, Connecticut on November 14th, 1962. Ames thereupon appeared personally and by attorney in the Connecticut action, and was ordered to pay monthly alimony, which he did in fact pay for a period of time.

The Connecticut action was referred to a state referee who conducted hearings on various dates during 1964 and 1965 and who rendered his report on August 24th, 1965, finding the facts in favor of petitioner, Marguerite, finding the respondent Ames guilty of intolerable cruelty, and recommending a permanent support award.

In March, 1965, the respondent Ames filed an annulment petition in Texas. On March 24th, 1965, the Connecticut Superior Court enjoined the respondent Ames:

> "either directly or indirectly, personally or by his agents or attorneys, from prosecuting, pursuing, proceeding or, in any manner whatsoever, from taking action in or with regard to a certain law-

> suit in the Juvenile Court of Dallas, Dallas County, Texas, or in any other jurisdiction of the State of Texas, or any other State, until the principal cause, as above captioned, shall have been heard or until further order of this Court."

It is to be noted that by virtue of the original personal service on Ames, the Connecticut Superior Court had personal jurisdiction to issue the injunction.

On March 15th, 1965, the respondent Ames had filed the instant divorce action in Texas, but made no attempt to notify the petitioner Marguerite of its pendency or to serve any papers upon Marguerite until September 2, 1965, some nine days after the Connecticut referee had rendered his report in favor of petitioner Marguerite. On September 9, 1965, the petitioner Marguerite obtained another injunction from the Connecticut Superior Court enjoining him:

> "either directly or indirectly, personally or by his agents or attorneys, from prosecuting, pursuing, proceeding or, in any manner whatsoever, from taking action in or with regard to a certain lawsuit in the Court of Domestic Relations in and for Dallas County, Texas, or in any other Court of the State of Texas, or in any other action concerned with the relationship of the parties as husband wife either in any Court of the State of Texas, or any other state, until the principal cause, as above captioned, shall have been determined or until further order of this Court."

The respondent made no attempt to appeal the

September 9th injunctive order, but he did thereafter move to erase the same; the motion to erase was heard and denied and respondent's appeal from denial of the same was dismissed by the Connecticut Supreme Court.

The petitioner Marguerite appeared specially in the Texas Domestic Relations Court, challenged jurisdiction and pled in abatement, claiming lack of jurisdiction over her person, claiming the pendency of the Connecticut action, and claiming the Connecticut injunctions. These claims were overruled, and thereafter judgment was entered granting Ames a divorce and purporting to divide and settle title to the various properties of the parties, whence the petitioner appealed.

In the meanwhile, the Connecticut action proceeded through the necessary steps to final judgment, the respondent Ames appealed, and said appeal is pending before the Supreme Court of Connecticut.

PRESENTATION OF THE FEDERAL QUESTIONS.

The claims relating to personal jurisdiction were first raised by the petitioner in paragraph 1 of her first and second sworn motions challenging jurisdiction, filed in the Domestic Relations Court in Dallas. They were further raised in the plea in abatement, and in the first amended plea in abatement, paragraph 3.

These claims were overruled by the trial court without opinion (judgment, dated December 15th, 1965, page 1).

Said claims were raised before the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas in the Points of Error, First Point and Fifth Point.

The Texas appellate court recognized that the issue had been raised:

> " . . . . defendant filed her motion challenging the jurisdiction of the Texas court on the grounds (a) that she was not a resident of the State of Texas. . . ."
>
> (408 S.W.2d 550, 551; Appendix I, p. 1a)
>
> "On September 16th, 1965, Marguerite Nowell filed her sworn motion in the Texas suit challenging the jurisdiction of the court over her person. . . ."
>
> "On September 24th, 1965, Marguerite Nowell filed her sworn motion . . . . challenging the jurisdiction of the Texas court over her person. . . ."
>
> (408 S.W.2d 550, 552; Appendix I, p. 4a)

The Texas appellate court did not expressly consider these issues, but overruled the petitioner's claims by its decision:

> "Finding no merit in any of the appellant's Points of Error, the same are overruled, and the judgment of the trial court is affirmed."
>
> (408 S.W.2d 550, 556; Appendix I, p. 15a)

The second federal question, the interference with the Connecticut Superior Court's jurisdiction and the claim of full faith and credit and comity, was initially raised in the petitioner's two sworn motions challenging jurisdiction, paragraphs 5 and 6.

The question was further raised in the first amended plea in abatement, Par. 5, where the full faith and credit clause was specifically invoked. These claims were denied and overruled by the trial court, without opinion (Judgment, dated December 15, 1965).

These claims were again presented to the trial court on the petitioner's Original Motion for New Trial, Par. 4c, 5b, 6c. This motion was denied by the trial court.

Subsequently these claims were presented to the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas in the Points of Error presented before that Court, Second Point, Third Point, Fifth Point, Sixth Point.

The Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas stated:

> "We are convinced, and so hold, that the Texas court did not abuse its discretion in denying Appellant her plea to the jurisdiction and plea in abatement . . . Appellant's Points 1 through 6 inclusive are overruled."
>
> (408 S.W.2d 550, 555; Appendix I, pp. 11a, 12a)

REASONS FOR GRANTING THE WRIT.

The Texas court has gone considerably beyond the limitations of due process in adjudicating the financial relationships of the petitioner and her respondent husband. At no time has the petitioner resided in Texas. The Texas court did have the power to render a divorce alone without personal service on this non-resident defendant, but such a determination would affect only the **status** of AMES NOWELL towards a non-resident, which determination would be binding in the State of Texas on the question of marital **status** alone. **Haddock v. Haddock,** 201 U.S. 562, 26 S.Ct. 525, 50 L.ed. 867; **Pennoyer v. Neff,** 95 U.S. 714, 734, 24 L.ed. 565; **Maynard v. Hill,** 125 U.S. 190, 8 S.Ct. 723, 31 L.ed. 654; **Cheeley v. Clayton,** 110 U.S. 701, 705, 4 S.Ct. 328, 28 L.ed. 298; **Cikora v. Cikora,** 133 Conn. 456, 459, 52 A.2d 310; **Carter v. Carter,** 147 Conn. 238, 241, 159 A.2d 173.

While a court may so determine status without personal jurisdiction, nevertheless, no court may render an in personam judgment affecting the monetary rights of the parties or their property without personal jurisdiction. **Pennoyer v. Neff,** 95 U.S. 714, 734, 24 L.ed. 565.

Even beyond the question of personal jurisdiction, the Texas courts have failed to give full faith and credit to the judicial proceedings in the Connecticut Superior Court.

Failure to render full faith and credit to a foreign judgment constitutes good grounds for granting a

petition for certiorari. **Aldrich v. Aldrich,** (W.Va. 1964) 378 U.S. 540, 84 S.Ct. 1687, 12 L.ed.2d 1020.

The temporary injunctions issued by the Connecticut Superior Court were final and were appealable and required immediate obedience. **Walden v. Siebert,** 102 Conn. 353, 360, 128 Atl. 702.

These injunctions were not subject to retroactive modification and were entitled to full faith and credit. The Texas court should have recognized that it was interferring with the Connecticut Superior Court jurisdiction, and should have recognized the injunctions, if not by full faith and credit, at least by comity. **Blanchard v. Commonwealth Oil Company,** (5th Cir., 1961) 294 F.2d 834; **Cole v. Cunningham,** 133 U.S. 107, 116, 117, 10 S.Ct. 269, 33 L.ed. 538.

Although the injunctions were temporary, the Texas courts were required by the Constitution to give these injunctions the same effect and recognition as they would be given in Connecticut. **Aldrich v. Aldrich,** (W.Va. 1964) 378 U.S. 540, 84 S.Ct. 1687, 12 L.ed.2d 1020; **Walden v. Siebert,** 102 Conn. 353, 360, 128 Atl. 702.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully Submitted,

EDGAR W. BASSICK, III,
Counsel for Petitioner.

APPENDICES